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PROBLEMS AND APPROACHES TO AREAWIDE WATER QUALITY MANAGEMENT. EXECUTIVE SUMMARY

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PREFACE

This volume is the Summary of a report entitled *Problems and Approaches to Areawide Water Quality Management*, prepared by the Indiana University School of Public and Environmental Affairs for the United States Environmental Protection Agency. The volume abstracts the major ideas and information of the larger report, emphasizing guidelines for people concerned with the planning and implementation of areawide wastewater management. Planners should read the full report; this volume does not include all important details.

SUBJECT OF THE REPORT

The subject of this report is certain sections of the Federal Water Pollution Control Act Amendments of 1972, henceforth referred to as the Act.

The report is written for anyone with responsibility for implementing the Act at the state and local level: planners, managers, elected or appointed officials, members of citizen groups, engineers, lawyers, anyone concerned with the daily problems of water quality management.

The Act has many new and important implications. It sets out the requirements and methods for getting federal funding for water quality control projects. It also contains avenues for innovation and imagination which could have major effects on water quality management.

One of the Act's most important emphases is on *areawide* planning and management. The sections of the Act which are the special focus of this report — §208 (c) (2) and related sections — are of special significance in this respect. §208 (c) (2) addresses specific problems in areawide wastewater management. It defines the special features (called "adequate authority") required of an areawide waste treatment management agency to qualify for federal funds for the construction of treatment works. The related sections of the Act examined in this study deal with the planning and regulatory aspects of areawide wastewater management. Anyone applying for construction grants under the Act needs to know the provisions of these sections; they offer opportunities never before available.

The multidisciplinary research which produced this report covered two major areas: the legal authority of present wastewater management entities; and the management structure of (existing and proposed) wastewater management entities. The study analyzed the present laws of fifty states to see whether present wastewater management entities have "adequate authority" to perform as the Act requires — an issue which all state and local personnel must resolve if they are to get funds. The study also examined several successful existing management arrangements, seeking to describe the management problems which the Act may create, and to identify various workable management organizations.

In sum, the study focused on both the legal and the practical problems of setting up a management organization aimed at water quality control, with particular attention to the entire planning process. The final report identifies the kinds of problems planners and managers may face, recommends some solutions, and identifies some of the opportunities provided by the Act.

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CONTENTS OF THE STUDY'S FINAL REPORT

The full volume of which this is a Summary contains the following material:

☐ Section I: *Conclusions* about the planning, management, and regulation of areawide waste treatment, as required or possible under §208 and related sections of the Act.

☐ Section II: *Recommendations* to state and local authorities as to how to use the Act, how to fulfill its requirements, and how to meet the requirements of §208 (c) (2).

☐ Section III: *Introduction* to the significance of the Act, the Act's requirements, the study's methodology, and the research group's guiding concepts.

☐ Section IV: *Adequate authority* of present wastewater management entities to perform, under present laws, as required by the Act's §208 (c) (2).

☐ Section V: *Management problems* likely to be faced by management entities turning geographic and hydrologic realities into administrative realities.

☐ Section VI: *Management models* — areawide, basinwide, and regionalized state — which may serve effectively for planners implementing §208 (c) (2).

☐ Section VII: *Legal problems* likely to arise when any of the above models are implemented.

☐ Section VIII: *Regulatory approaches*, and the ramifications of their relationship to the Act's plans for improving water quality.

☐ Section IX: *Acknowledgements*

☐ Section X: *References*

☐ Section XI: *Glossary*

Two appendices to the full volume complete the report. Appendix A contains suggested or model legislation and Appendix B, a report on current state laws.

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CHARACTERISTICS OF THE ACT

The Act differs from previous Acts in important ways. Legislators have identified various problems in previous efforts at water quality management and laid out new paths toward their solution. The Act's concepts and methods need specification, which can be achieved only in time, as real world operations commence, through cooperation between personnel at all levels of government (especially operational personnel dealing with the daily problems of water quality). Time, goodwill and open-mindedness are needed to implement the Act.

1 This report concentrates on one important characteristic of the Act: its emphasis on areawide planning, especially as embodied in §208. Recognizing that many past efforts at improving water quality have failed because they were too brief or lacked geographic coordination, the Act deliberately creates the time and structure for local and state governments to work together. Any state seeking maximum benefits from the Act will develop an areawide plan (a §208 plan) and waste treatment management agencies. The Act specifies a set of benefits for them:

- ☐ Geographical and political units now have the methods and funds to cooperate in a systematic and enduring fashion, rather than working piecemeal over a short term.
- ☐ Instead of waiting until the operational stage to find out an approach doesn't work, communities can now define at the planning stage the problems caused by the need to improve water quality, and they can fight their battles early enough to avoid wasting money and effort.
- ☐ All viewpoints within a community, including those of the public, can find opportunity for expression in the planning effort, which is no longer confined to specialists.
- ☐ Instead of only building more, expensive treatment works, a community can integrate efforts to improve its water quality with the rest of its environmental, political and economic life.

2 §208 (c) (2) will strongly encourage state and local personnel to examine seven basic issues:

- ☐ The linkage between an area's management of its wastewater and its management of all other residuals.

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- ☐ The linkage between an area's management of its wastewater, and its management of the water supply and of all other water-oriented activities.
- ☐ The linkage between an area's water quality management agency and the area's governments of general jurisdiction with authority over land use.
- ☐ The legal and practical relationships between governments of general jurisdiction and any agency with a single or special function.
- ☐ The wide range of alternative methods for controlling the quantity and quality of water, starting from when it is generated for use and ending before it is discharged as waste — rather than concentrating only on the conventional "treatment works."
- ☐ The question of representation in decisions about water quality: what does "representation" mean? who should be represented, and how?
- ☐ The nature of institutionalized flexibility: how does one create a water management agency which will endure as a cohesive entity and at the same time easily adjust to dynamic change as the area's needs change?

3 These issues show that a major characteristic of the Act is its attention to the societal implications of water quality control, as well as to technical and practical issues. The Act gives communities a chance to face both practical and societal problems in a thorough and systematic manner. It also emphasizes that planners, at the beginning stages, should face rather than avoid these issues.

4 The Act is more detailed than previous Acts. It establishes goals to be met nationwide. It gives the federal government authority over the authorization of funds and implementation of its intentions, and it shows in detail the program plans which statewide and areawide entities are to follow.

5 The Act continues earlier attempts to achieve water quality by coupling money with enforcement, but there are important changes. The level of federal funding has increased substantially, and these funds may now probably be used for programs other than conventional treatment works (particularly

under §208). In addition to water quality standards, the enforcement provisions now use effluent limitation standards and a permit system. Moreover, though the Act retains standards enforcement as a basic determinant for federal construction grants, there are also provisions requiring areawide agencies to be self-supporting through charges to all users, and to achieve water quality by the most cost-effective method. These two provisions have the potential for improving water quality at the least possible overall cost, an obvious benefit to local communities.

6 The Act's standards for securing federal grants for a project provide new concepts concerning planning, cost effectiveness, and method of operation:

- ☐ The project must arise from a planning process in which a wide range of alternatives was considered.
- ☐ The plan of which the project is a part must have been chosen through a representative process.
- ☐ The project must be cost-effective.
- ☐ The project must prospectively generate enough revenue from users to become self-supporting.

7 The Act emphasizes areawide or regionalized planning, requiring cooperation between local units of government if water quality projects are to receive federal funds. The words "planning" and "coordination" should be given full weight. The Act clearly does not want to establish centralized operational control — areawide czardoms. Equally, however, it does want to discourage fragmentation. For good reason, it seeks coordination of the optimal number of management agencies and interests at the planning stage, so that planning will be realistic, operations smooth, and the entire process both effective and cost-effective.

8 Most important to the present report of the Act, in §208, encourages areawide management as well as planning, including control of both point and nonpoint sources of pollution. This approach stems from previous failures of federal funding to improve water quality adequately to justify the outlay of federal funds. Too often the cause of failure was lack of coordination among political subdivisions, as people in the field well know. In this Act, the federal government is also required to be responsive and timely to state and local

needs. Cooperation, in other words, is built into the Act, with the special intentions of helping urban-industrial concentrations with significant waste water problems and of enabling waste treatment agencies to avoid the costly or disabling errors of the past.

9 The Act's view of water quality control will have an obvious impact on land use planning. To regard water as a communal resource, with associated costs, and needing planning and management, is to assert that its relationships with land use deserve careful attention. The Act implies that the use of land and the use of water are inseparable, and that the problems caused by their interaction need to be faced rather than avoided.

REQUIREMENTS OF THE ACT

Areawide Sequence

To achieve wastewater treatment management on an areawide basis, the Act provides time, money, and information to move logically from initial planning through full operation and on to performance assessment.

§303

§303 covers the top-level, state planning process, concerned with river basins and the effect of discharges on the receiving waters.

§201

§201 covers areawide planning on an interim basis. §201 planning precedes §208 planning — it is smaller in scope and does not deal with nonpoint sources, but it is intended to initiate the use of a cost efficiency study.

§208

§208 deals fully with areawide planning and management, including point and nonpoint sources. It must conform with plans resulting from the §303 planning process and it must include any interim §201 plan. It is the major planning and operational requirement affecting local jurisdictions. After EPA has approved it, all construction projects within the area must conform to it if requesting federal assistance.

Under §208, both an areawide plan and an areawide waste treatment management agency (or agencies) are developed. The following sequence of activities must take place in order to bring this about:

On the basis of EPA guidelines describing the nature of areawide jurisdictions, the Governor of a state identifies the boundaries to which the areawide plan will apply. §208(a).

The Governor also designates a single representative organizational group to commence the planning process and to design the §208 plan. This group will include a "planning agency." §208(a).

Having designed the §208 plan according to the Act's requirements, the organizational group (through the Governor) submits the plan to EPA for the Administrator's approval. §208(a).

At the same time, after consultation with the planning group, the Governor designates the waste treatment management agency (or agencies) to be responsible for implementing the plan. He submits it (them) to the Administrator for approval at the same time as the plan. §208(c).

EPA examines the plan and the designated agencies according to criteria set out in the Act. §208(b).

To gain approval, a waste treatment management agency must meet the requirements of §208(c)(2).

REQUIREMENTS: §208 (b)

The requirements for a §208 plan to gain approval are set out in §208(b). In order for a §208 plan to be approved by the Administrator of EPA, it must include, but is not limited to,

A the identification of treatment works necessary to meet anticipated needs over a twenty-year period; necessary wastewater collection and urban stormwater runoff systems; and a program to provide necessary financial arrangements;

B the establishment of construction priorities and time schedules for initiation and completion;

C the establishment of a regulatory program to implement requirements of §201(c), to regulate location of any facilities which result in discharges in the area, and to assure that industrial wastes discharged into a treatment works meet applicable pretreatment standards;

D the identification of those agencies necessary to construct, operate, and maintain all *facilities* required by the plan and otherwise to carry out the plan;

E the identification of the measures necessary to carry out the plan (including financing), the period of time necessary to carry out the plan, the costs of carrying out the plan within such time, and the economic, social and *environmental impact* of carrying out the plan within such time;

F a process to (i) identify, if appropriate, agriculturally and silviculturally related nonpoint sources of pollution, including runoff from manure disposal areas, and from land used for livestock and crop production, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

G a process to (i) identify, if appropriate, mine-related sources of pollution including new, current, and abandoned surface and underground mine runoff, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

H a process to (i) identify construction activity related sources of pollution, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

I a process to (i) identify, if appropriate, salt water intrusion into rivers, lakes, and estuaries resulting from reduction of fresh water flow from any cause, including irrigation, obstruction, ground water extraction, and diversion, and (ii) set forth procedures and methods to control such intrusion to the extent feasible where such procedures and methods are otherwise a part of the waste treatment management plan;

J a process to control the disposition of all *residual waste* generated in such area which could affect water quality; and

K a process to control the disposal of pollutants on land or in subsurface excavations within such area to protect ground and surface water quality.

In addition, the areawide plan must be certified annually by the Governor (or his designee) as being consistent with applicable basin plans. Of the requirements listed above, clauses (F) through (K) may be developed and submitted on a statewide basis if consistent with a §303 plan.

REQUIREMENTS: §208 (c) (2)

In §208(c)(2) appear the requirements imposed on a waste treatment management agency if it is to receive approval by the Administrator of EPA. The requirements of §208(c)(2) are implemented or enforced by the Administrator, who has the authority to accept or reject the management agency designated by the Governor. The criteria for rejection are set out in §208(c)(2) as follows:

> The Administrator shall accept any such designation, unless within 120 days of such designation, he finds that the designated management agency (or agencies) does not have adequate authority —
>
> **A** to carry out appropriate portions of an areawide waste treatment management plan developed under subsection (b) of this section;
>
> **B** to manage effectively waste treatment works and related facilities serving such area in conformance with any plan required by subsection (b) of this section;
>
> **C** directly or by contract, to design and construct new works and to operate and maintain new and existing works as required by any plan developed pursuant to subsection (b) of this section;
>
> **D** to accept and utilize grants, or other funds from any source, for waste treatment management purposes;
>
> **E** to raise revenues, including the assessment of waste treatment charges;
>
> **F** to incur short- and long-term indebtedness;
>
> **G** to assure in implementation of an areawide waste treatment management plan that each participating community pay its proportionate share of treatment costs;
>
> **H** to refuse to receive any wastes from any municipality or subdivision thereof, which does not comply with any provisions of an approved plan under this section applicable to such area; and
>
> **I** to accept for treatment industrial wastes.

It is not required that a single management agency have all these authorities. Two or more agencies, each with adequate authority to perform in compliance with the areawide plan, may collectively meet the requirements of §208 (c) (2).

In addition to the requirements imposed by this section of the Act, a waste treatment management agency must also meet the requirements imposed on any particular project within its area. Other requirements in other sections of the Act are also interrelated. For example, to be accepted by the Administrator, a waste treatment management agency must conform not only with the areawide plan but also adopt an acceptable system of user charges. Such relationships between §208(c)(2) and other sections should be kept clearly in mind. Requirements imposed on particular projects are discussed in the following pages.

REQUIREMENTS FOR PARTICULAR PROJECTS

In addition to the general requirements listed in the previous section for the establishment of a waste treatment management agency, other sections of Title II (Grants for Construction of Treatment Works) impose requirements on particular projects after a §208 plan is adopted. Some of the most important are noted in this section.

Some requirements for a particular project appear technological in nature. As an example, §201 (g) (2) provides that the Administrator shall not make a grant for a treatment works (from funds authorized for any fiscal year after June 30, 1974) unless the applicant has satisfactorily demonstrated that (A) alternative waste management techniques have been evaluated and that the proposed project represents the application of the best practicable waste treatment technology; and (B) as appropriate, the proposed project takes into account and will allow the application of technology at a later date which will provide for reclaiming or recycling of water or otherwise eliminating the discharge of pollutants. As noted in Section V of this report, the consideration and adoption of alternative techniques is vital if water quality management is to be accomplished as conceived under the Act. §201 (g) (3) also requires the applicant to show that the sewer collection system discharging into the proposed works is not subject to excessive infiltration. From a technological and operational point of view, meeting these requirements can be both difficult and costly.

§203(a)

§203(a) of the Act requires that the applicant submit for the Administrator's approval the plans, specifications and estimates for the project.

§204(a)

§204(a) provides that, before approving any grants, the Administrator shall determine:

1. that the works are included in any applicable areawide waste treatment management plan developed under §208 of the Act;
2. that such works are in conformity with any applicable state plan developed under §303(e) of the Act;
3. that such works have state certification as to priority within the state in accordance with any state plan developed and §303(e) of the Act;

4 that the applicant agrees to pay the non-Federal costs of such works, and has made provision for proper and efficient operation;

5 that the size and capacity, including reserve capacity, of the works relate directly to the needs to be served; and

6 that no specifications for bids are so written as to contain no priority, exclusionary or discriminatory requirements.

The waste treatment management agency must also be cognizant of, and be prepared to overcome, any adverse effects on the environment. §511(c) of the Act provides that action of the Administrator in approving a grant for a publicly owned treatment works as authorized by §201 is not exempted from the impact statement requirements of the National Environmental Policy Act of 1969. The applicant must, therefore, be in a position to supply information for the required impact statement.

The foregoing are not exhaustive, but are examples of requirements imposed on particular projects for which federal funding is sought.

After a §208 plan has been adopted and approved by the Administrator, there is a clear sequence of requirements for any project in the area applying to be approved and funded. The major requirements are as follows:

1 The applicant (waste treatment management agency) must be accepted by the Administrator, and, in order to be accepted, the applicant must have adequate authority either alone or in conjunction with other agencies (i) to carry out its (their) appropriate portions of the areawide plan and (ii) to perform as otherwise required.

2 The proposed project must be in conformity with any applicable state plan and be certified by the state agency as having priority for funding.

3 The proposed project must comply with the areawide plan and be under management of an approved management agency.

4 The proposed project must meet the technical and special requirements of the Act as promulgated by the Administrator.

CONCLUSIONS

Planning

- ☐ The planning process should be integrated with other activities (design and construction, operations, and performance assessment) throughout the entire process of wastewater management. It may be separate but must not be isolated and can never be complete without continuous exchange with the management organization. Existing agencies may be designated by planners to implement the plan; however, designating too many agencies runs the risk of creating further problems by fragmentation of responsibility.
- ☐ Planners should look at innovative policy alternatives for improving water quality, not just conventional physical structures for wastewater treatment.
- ☐ Choices between alternative treatment strategies must be made on a cost-effective basis.

  Planning for the improvement of water quality is inseparable from the planning of land use.
- ☐ The ways in which public participation in water quality control decisions can be assured have not yet been sufficiently defined.
- ☐ Disagreements between entities within an area engaged in §208 planning can be expected. They are normal and healthy. They deal mainly with the designation of geographical and functional powers and duties.

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RECOMMENDATIONS

Planning

- ☐ The planning process should consider a wider range of alternative and complementary strategies to achieve water quality. Among these strategies should be the following:
  - land use controls
  - permit systems
  - differentiated user charges
  - prohibitions
  - in-plant process changes
  - by-product production
  - materials recovery
  - use of assimilative capacity
- ☐ Planning entities should use the provisions of the Act to ensure that *all* interested parties receive adequate information about alternative strategies and their consequences. The public being served, as well as the waste treatment management agencies and the policy-makers, should be kept informed.
- ☐ Because any areawide plan will fundamentally affect development within an area, it should be formulated by local governments and their constituents. This will help both to overcome local apprehension about any loss of autonomy as a consequence of areawide management, and to facilitate adoption and implementation of the areawide plan. The plan must not merely be "announced" or "given" to a local area.
- ☐ The provisions of the Act requiring appropriate representation in areawide planning should be so implemented that elected representatives of local general purpose governments comprise a substantial portion of the membership of policy boards.
- ☐ The rules and regulations to be promulgated by EPA should contain an explicit statement that under §201(g)(2)(A) federal assistance will be available to support a wide range of alternative strategies aimed at achieving desired levels of ambient water quality at least cost. Such activities as resource utilization charges, materials recovery, and by-product production could be eligible for federal assistance.

CONCLUSIONS

Management

- ☐ The Act significantly increases the number of different treatment strategies eligible for federal funds. Construction of more and larger treatment plants (the "end-of-the-pipe" philosophy) is not enough.
- ☐ In all states the present legislative basis for the "adequate authority" required by the Act of a waste treatment management agency should be examined to determine the need for new legislation.
- ☐ Though any waste treatment management structure must be very adaptable to local needs, three model structures (areawide, basinwide, regionalized state) offer the appropriate flexibility.
- ☐ The price mechanism can reduce wastewater discharges and is an alternative strategy to be considered under the terms of the Act.
- ☐ The political boundaries of existing management agencies may cause problems, mostly because present laws give them limited responsibilities.

RECOMMENDATIONS

Management

- ☐ In addition to recovering the direct costs of treatment, management entities should adopt user charges to recover the costs of management activities (such as planning, monitoring, operation of facilities, administration, and technical assistance provided within the service area).
- ☐ Both EPA and areawide agencies should consider using such economic incentives as full cost recovery user charges to influence:
  - point source discharges (public-owned facilities, industrial and commercial establishments, etc.)
  - nonpoint source discharges (construction runoff, agricultural runoff, stormwater runoff, etc.)
- ☐ EPA, state agencies, and waste treatment management agencies should seek eventual integration of the management of water quality with the management of solid and gaseous residuals, at both state and local levels.
- ☐ Through creative administration of the provisions of §208(c)(2), EPA should encourage and strengthen the programs of existing entities — whether local, areawide, or state — which already have the authority to plan, design, construct, and operate facilities and to apply nonstructural measures.

CONCLUSIONS

Regulation

☐ Methods for regulating water quality include:

- land use control
- permits and licensing
- standards
- price mechanisms
- persuasion
- traditional enforcement
- the purchasing power of government

The operations of the marketplace are at least as effective as direct government intervention.

☐ Where an areawide plan encompasses several municipalities or waste treatment management agencies, the noncompliance (non-cooperation) with the areawide plan by one or more of the municipalities or agencies may be difficult to rectify if such noncomplying agency or community is not violating effluent or water quality standards.

Performance Assessment

☐ The federal government needs to disseminate explicit criteria for assessing the performance of planning and management agencies.

☐ Assessors and assessed will have to design these criteria together and should agree on later changes.

☐ The federal government will need to equip itself with the capability for performance assessment, just as it can now perform money audits.

☐ Most state and local governments lack enough trained personnel, especially to conduct performance assessment. The federal government could usefully provide training grants.

RECOMMENDATIONS

Regulation

☐ The state and areawide agencies should consider a full range of regulating tools, or combinations thereof, including

- land use controls;
- permits and licensing;
- standards;
- pricing mechanism;
- persuasion;
- traditional enforcement procedures; and
- their purchasing power.

☐ To overcome problems of the noncompliance (non-cooperation) of communities within the area encompassed by an areawide plan, an areawide agency or a state agency should have the power either (i) to require compliance from all municipalities and agencies encompassed by the areawide plan; or (ii) to take over all or part of the functions of the noncomplying community and perform in accordance with the areawide plan. As an alternative or supplement, the permit system and grant system of the state should be used to influence noncomplying communities.

Performance Assessment

☐ In addition to a procedural checklist, the EPA should develop and implement a performance assessment capability focusing on the ability of water quality management agencies to perform as required.

☐ Each state should also develop and implement a performance assessment capability. This capability, however, should focus on evaluating the programs of regional authorities, sanitary districts, municipalities, and other intrastate operating agencies with the responsibility for improving water quality.

CONCLUSIONS ABOUT §208 (c) (2)

§208 (c) (2) (A)

☐ Few existing management agencies established by state and local laws have adequate authority to perform *all* the functions required of a waste treatment management agency as set forth in §208(c)(2) and related sections of the Act. In most states, however, there are two or more agencies with jurisdiction in the same geographical area which collectively could meet the requirements of §208(c)(2); i.e. could perform one or more of the "appropriate portions" of the areawide plan. Therefore, if the areawide plan adopted pursuant to §208(b) assigns or delegates performance of such "appropriate portions" to the one or more agencies with the legal capacity and demonstrated capability to perform such within the area, the requirements of §208(c)(2)(A) can be met in these states without new or amendatory legislation.

§208 (c) (2) (B)

☐ In order to assess the adequate authority of waste treatment management agency (agencies) to "manage effectively waste treatment works and related facilities" as required by §208(c)(2)(B), both the legal capacity and management capability of the management agency (agencies) should be considered; therefore, such assessment cannot be made, and it cannot be determined whether the agency (agencies) meet the requirements of §208(c)(2)(B) and the requirements of §204(b)(1)(C), until the areawide plan is adopted and the functions of the agency (agencies) are set forth therein.

RECOMMENDATIONS ABOUT §208 (c) (2)

§208 (c) (2) (A)

☐ To facilitate compliance with §208(c)(2)(A), the §208(b) areawide plan should assign or delegate implementation of "appropriate portions" of the plan to *existing* waste treatment management agencies that have the legal capacity and demonstrated management capability to perform such assigned portion (portions) — provided, however, that such delegation does not result in excessive fragmentation. "Appropriate portions" has both functional and geographic implications.

§208 (c) (2) (B)

☐ Federal and state authorities should define the term "manage effectively" in this section so as to evaluate the capabilities of management agencies to perform, rather than focusing on the procedural aspects required to be eligible for a grant under the Act. Management agencies should be given time enough to demonstrate their ability to perform.

CONCLUSIONS

§208 (c) (2) (C)

☐ Most waste treatment management agencies have adequate authority to design, construct and operate waste treatment works as required by §208(c)(2)(C), including the broad meaning of "treatment works" as defined in §212(2). The emphasis, however, so far has been on a single option — conventional treatment plans.

§208 (c) (2) (D)

☐ Most waste treatment management agencies have adequate authority to accept and utilize grants, or other funds from any source, for waste treatment management purposes as required by §208(c)(2)(D) of the Act.

RECOMMENDATIONS

§208 (c) (2) (C)

☐ State authorities should emphasize the broader meaning of "treatment works" when enacting new legislation about a waste treatment management agency's authority to design, construct, and operate waste treatment works as required by this section. States and management agencies should take advantage of this broader meaning when determining the type of project for which a grant will be sought.

§208 (c) (2) (D)

☐ Most waste treatment management agencies have adequate authority to accept and utilize grants as required by this section. However, in cases where an intermediate agency is to receive the grants for distribution to a waste treatment management agency, the states should provide (if they have not already done so) that such federal grants can be used only for the specific project for which the grant was made.

CONCLUSIONS

§208 (c) (2) (E)

☐ Most waste treatment management agencies as operating agencies have adequate authority to raise revenues and assess waste treatment charges as required by §208 (c) (2) (E) of the Act.

1 In many states, however, although there is the legal capacity so to charge, the existing systems of charges utilized by such agencies do not meet the additional requirements that such charges result in each category of user paying its proportionate share of the cost of operation and maintenance as required by §204 (b) (1) (A).

2 In most states, however, not only do existing systems of charges fail to meet, but there is no express statutory authority to enable the agency (agencies) to meet the requirement that industrial users repay the federally funded portion of construction costs as attributed to treating industrial wastes as required by §204 (b) (1) (B).

3 In addition, in large urban-industrial areas with many industries discharging into the system, the securing of firm and binding commitments from each industry to pay its share of the federal portion of construction costs as required by §204 (b) (1) (B) presents substantial implementation problems. This in turn affects the implementation of §208 (c) (2) (E).

RECOMMENDATIONS

§208 (c) (2) (E)

☐ Although most waste treatment management agencies have authority to raise revenues and assess waste treatment charges,

1 such agencies must devise user charge systems and methods which ensure that each category of user pays its proportionate share of costs so as to comply with §204 (b) (1) (A). These charge systems and methods should be based on the characteristics of the user's discharge. These characteristics include volume, delivery flow rate (timing of discharge), and composition of the effluent (e.g. biochemical oxygen demand, suspended solids, toxic substances); and

2 to meet the requirements of §204 (b) (1) (B), the states should enact legislation expressly authorizing recovery from industrial users of the federally funded portion of construction costs attributed to treating industrial wastes; and

3 to recover these costs from industrial users, each major contributor of industrial wastes into the system should be required to give firm commitments to pay its share. "Major" is determined by the impact of the characteristics of the industry's discharge into the system. For less than major contributors, a charge system should be devised so as to recover costs from them as a class. Agreements by an industry to repay costs should be transferrable to a new or different industry to permit the latter to discharge into the system.

CONCLUSIONS

§208 (c) (2) (F)

- ☐ Most waste treatment management agencies have adequate authority to incur both short- and long-term indebtedness as required by §208 (c) (2) (F), although certain approval or procedures are required under state laws.

§208 (c) (2) (G)

- ☐ Under most state laws, waste treatment management agencies do not have express statutory authority to assure that each participating community (municipality) pay its proportionate share of treatment costs as required by §208 (c) (2) (G) of the Act. Most states do, however, permit contracting for services by and among communities, and such contracts usually provide for sharing treatment costs.

§208 (c) (2) (H)

- ☐ One of the most prevalent problems is the inability or lack of authority of any agency within an area to comply with §208 (c) (2) (H) of the Act, which requires that the waste treatment management agency have adequate authority "to refuse to receive any wastes from any municipality or subdivision thereof, which does not comply with any provisions of an approved areawide plan."

RECOMMENDATIONS

§208 (c) (2) (F)

☐ Since most waste treatment agencies have adequate authority to incur short- and long-term indebtedness as required by this section, the applicant agency also should make certain of approval from all elected and administrative entities and should ensure that all procedures required by state and local laws have been followed. This is to ensure that the funding is not contingent upon securing such approval.

§208 (c) (2) (G)

☐ To comply with this section, many states should enact specific statutory authority requiring that each participating community pay its share of treatment costs. In all cases, the areawide plan should make the same requirement. (In the case of interlocal agreements, the proportionate shares of each participating community should be openly and freely agreed upon and made part of the general agreement.)

§208 (c) (2) (H)

☐ It is highly unlikely that an operating agency would cut off sewer service to a municipality or subdivision thereof which does not comply with *any* provision of the areawide plan as provided in this section. State laws, therefore, should authorize waste treatment management agencies to deny service to any new users within the noncomplying municipality or subdivision, and/or to assess penalties against it which would assure compliance within a reasonable time. Such laws should include adequate notice or warning periods to permit voluntary compliance.

CONCLUSIONS

§208 (c) (2) (I)

☐ Most waste treatment management agencies have adequate authority to accept for treatment industrial wastes as required by §208 (c) (2) (I) of the Act, and, in addition, most waste treatment management agencies have authority to establish pretreatment standards and to refuse industrial wastes which do not comply therewith or which would interfere with the operation of the treatment works.

RECOMMENDATIONS

§208 (c) (2) (I)

- ☐ In the case of industrial wastes, as provided in this section, waste treatment management agencies (or state laws or regulations) should establish pretreatment standards for industrial pollutants which, if not pretreated, would either not be susceptible to treatment by the treatment plants or would interfere with the operation of the treatment plants. The waste treatment management agency should also make provision to control and assist in the disposition of wastes which treatment plants cannot accept.

CONCLUSIONS

§208 (b) (2) (C)

- ☐ Few states currently permit waste treatment management agencies to regulate the location, modification and construction of facilities, other than publicly owned treatment works, which result in any discharge of pollutants to waters in the area.
- ☐ Most states have sufficient legislation to implement a wide variety of regulatory tools such as permits and licensing, standards, pricing mechanisms, and traditional enforcement procedures such as fines and penalties.

RECOMMENDATIONS

§208 (b) (2) (C)

- ☐ **The states should enact legislation requiring that areawide planning agencies and/or waste treatment management agencies have enough input into land use planning so as to influence (or control) the location of facilities discharging pollutants into the area's waters.**

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